

(1995) 02 MAD CK 0122

In the Madras High Court

Case No : C.R.P. No's. 1134 to 1136 and 1245 to 1247 of 1993

Sree Balasubramanian and Co.

APPELLANT

Vs

M. Gokilamani, etc. and 15 others

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Citation : (1995) 02 MAD CK 0122

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : C. Ganesh for M/s. M. Kalyanasundaram and Ors. CRP 1134 to 1136/93, Mr. P. Sukumar CRP 1247/93 and for Respondents in CRP 1134 to 1136, 1245 and 1246/93, Mr. G. Subramaniam, for M/s K. Govindaraj and S. Kadarkarai CRP 1245 and 1246/93, for the appearing parties;

Judgement

Srinivasan, J.—Two questions arise for consideration in these revision petitions, (1) What is the relevant date on which the rights of the parties should be determined and (2) whether the petitioners in C.R.P. 1247 of 1993 can be permitted to pay the amount due by them in instalments when there is no provision to that effect in the decree? The relevant facts can be stated very shortly as follows:- Disputes arose among partners of the partnership firm by name Balasubramania Foundry. There were five partners. The matter went to the Supreme Court. The Supreme Court referred the dispute to the arbitration of C.J.R. Paul, J. retired Judge of this Court-He passed an award on 3-4-1985. The award was accepted by the Supreme Court and a decree was passed in terms of the award on 11-8-1987. Under the award, the business was to be taken by Sri Rangasamy, one of the partners who had a fifth share and Smt. Amsaveni Ammal and her daughters, who together had 2/5th share in the business. Thus, the persons to whom the business was allotted had 3/5 share. The other two partners were Palaniappan having 1/5 share and Doraisamy having another 1/5 share. The relevant part of the award read thus:-

"Sri Rangaswami is entitled to a 1/5 share while Srimathi Hamsaveniammal and

her three daughters are entitled to a 2/5 share and Sri Palaniappan is entitled to a 1/5 share and Shri Duraiswamy to a 1/5 share, Sri Rangaswami along with Srimathi Hamsaveniammal and her daughters therefore are jointly entitled to a 3/5 share and they have the preponderating interest and own the majority shares. Considering all these factors," I allot the business to Sri Rangaswami, Srimathi Hamsaveniammal and her daughters, jointly to be run by them under the name and style of Balasubramania Foundry alone with the superstructures on the site at 166, Patel Road, the machinery with the office furnitures, the leasehold right of the site, at 166, Patel Road, Coimbatore, the tools and the raw materials, the semi finished and finished goods available there on the date of possession of these are handed over to them on the following terms:-

Sri Rangasami, Srimathi Hamsaveniammal and her daughters who jointly own a 3/5 share in the partnership firm under dissolution will purchase the shares of the other partners Sri Palaniappan and Sri Duraiswami by paying to them each 1/5 of the value of the goodwill, the superstructures at No. 166, Patel Road, Coimbatore, the office furnitures, typewriters, and other such office equipment, the machinery, the tools and patterns and the raw-materials, semi-finished goods and finished goods of the Balasubramania Foundry available at the time of implementation of the award, and undertake the liability to pay the wages, allowances, bonus, gratuity etc. of the workers from that date as also the retrenchment compensation and notice payment of the workers who might be retrenched after the date, and also undertake the liability of paying the sales tax, excise duties, property tax etc. from that date. Sri Palaniappan and Sri Duraiswami will have no right, title or interest in that business or its goodwill, properties, assets etc. from the date Sri Rangaswami, Srimathi Hamsaveniammal and her three daughters take possession of the above assets, of the foundry."

2. Question No. 1.:- The first question referred to above turns on the construction of the above part in the award. According to Palaniappan and Doraiswamy, who can be conveniently referred to hereinafter as "outgoing partners", the assets and liabilities of the partnership firm have to be worked out as on 3-4-1985, the date of award or at any rate on 11-8-1987 the date of the decree of the Supreme Court. According to them, they are not liable for any of the liabilities of the business thereafter. It should be mentioned that even during the pendency of the proceedings in the Supreme Court, a receiver was appointed on 3-2-1984. He was in charge of the business till he was discharged by the order of the executing Court. During his period, the business incurred some loss and the outgoing partners did not want to be made liable for any share in the loss.

3. The executing Court rejected the contention of the outgoing partners and held that on a construction of the award, the partners to whom the business is allotted therein will be exclusively entitled thereto only from the date of their taking possession and consequently, the assets and liabilities of the firm should be worked out only as on that date. In this case, the executing Court has fixed

that date to be 31-7-1992 in view of the fact that the Commissioner appointed by the Court had looked into the accounts and submitted a report after evaluating the value of the assets. Aggrieved thereby, the petitioners in C.R.P. Nos. 1134 to 1136 of 1993 and the petitioners in C.R.P.1245 and 1246 of 1993 have preferred the above revision petitions. They are also aggrieved by the permission granted by the executing Court to the petitioners in C.R.P. No. 1247 of 1993 for paying the amount due by them in instalments.

4. In support of the contention, the petitioners submit that once an award is passed, the rights and liabilities must be worked out as on that date and in any event, the date of passing of the decree is the date on which the decree comes into force. Counsel appearing for the petitioners place reliance on some passages in the partnership of this Court in *Rani Leela Kumari v. Zamberlal* ((1980) II MLJ 47 : 93 L.W.419) and of the Supreme Court in *Forasol Vs. Oil and Natural Gas Commission*, and *Renu Saagar Power Company Vs. General Electric Company*, . In the first of the above cases, the Court held that in an action for wrongful detention, it is the date of the judgment or decree that would be the relevant date for purposes of valuation of the pledged jewels. The Bench relied on the judgment of the Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, . In the second case, the Supreme Court held that in an action to recover an amount payable in a foreign currency, five dates compete for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided. These dates are:-

- (1) the date when the amount became due and payable;
- (2) the date of the commencement of the action;
- (3) the date of the decree;
- (4) the date when the court orders execution to issue; and
- (5) the date when the decretal amount is paid or realized.

In a case where a decree has been passed by the court in terms of an award made in a foreign currency a sixth date also enters the competition, namely, the date of the award. The Court went on to observe that such a date must be selected which would put the plaintiff in the same position in which he would have been, had the defendant discharged his obligation when he ought to have done, bearing in mind that the rate of exchange is not a constant factor but fluctuates, from time to time.

5. In the third case, a money decree was passed pursuant to an award of the arbitrator and on appeal, the Supreme Court stayed the execution on condition of deposit of certain amount in terms of U.S. Dollars. Dispute arose as to the relevant date on which the exchange rate should be fixed. The Court held, after referring to the judgment in *Forasol Vs. Oil and Natural Gas Commission*, since appeal was pending, it was not necessary to go into general principle guiding

ascertainment of relevant date of exchange value and directed the judgment-debtor to deposit some additional amount.

6. None of the three rulings has any bearing in this case. We are concerned with an award passed by the Arbitrator, which has been made a rule of the Court. That decree passed by the Supreme Court is sought to be executed and the executing Court is bound by the terms of the decree. According to the decree, the shares of the outgoing partners are to be purchased by Rangasamy, Hamsaveni Ammal and her daughters jointly, who own in all 3/5 share in the partnership firm. The decree also makes the allotment of the business and its assets as on the date the possession of the same was handed over. Thus the outgoing partners continued to have interest in the business till their shares are purchased by the partners to whom it is allotted. In fact, Palaniappan filed a counter statement in the execution proceeding. In paragraph 6 thereof, he has stated thus:-

"6. Moreover, the entire accounts maintained by the Official Receiver who is in-charge of the foundry will have to be audited and the position of the accounts will have to be "considered" or "in consideration". The share of this respondent and the 3rd respondent has not been divested so far. Such divestment will take place only on payment of the amount due to this respondent and the 3rd respondent. In any event, the petitioners cannot seriously dispute the fact that this respondent and the 3rd respondent would continue to be the partners until the value of their share is fully paid to them. Such a decision as on the date of the judgment, in any event, cannot be seriously disputed. The share of profits of this respondent and the 3rd respondent till then, will have to be paid to them."

Hence, I have no hesitation to hold that the view expressed by the executing Court and fixing the relevant date as 31-7-1992 for ascertaining the liabilities and assets is unassailable. Hence, the first question is answered against the outgoing partners.

7. Question No. 2:- The executing Court is certainly in error in permitting the petitioners in C.R.P. No. 1247 of 1993 to pay the amount due by them in instalments. There is no provision to that effect in the decree. It is not open to the executing Court to alter the terms of the decree. The Court has misunderstood the order of the Supreme Court in the Miscellaneous Petition No. 1 of 1991. It is also brought to my notice that the petitioners in C.R.P. No. 1247 of 1993 have not complied with the order passed by the executing Court and after paying one instalment, they have not paid the remaining instalments. In any event the order directing payment in instalments deserves to be set aside. In the result, C.R.P. No. 1247 of 1993 is dismissed. CR.P. Nos. 1134 to 1136, 1245 and 1246 of 1993 are partly allowed to the extent of setting aside the direction given by the executing Court for payment in instalments. In all other respects, the said Revision Petitions are dismissed. The parties will bear their respective costs.